

New Delegates' Rights – Summary of protections

The new provisions establish rights for delegates at 3 levels:

- 1) Rights contained in the FW Act;
- 2) Rights contained in Modern Awards; and
- 3) Rights contained in enterprise agreements.

A delegate will be defined as someone who is appointed or elected under a unions' rules. Delegates' rights will include:

- Representing members' industrial interests, including in disputes;
- Reasonable communication with members and prospective members in relation to their industrial interests;
- In relation to those industrial interests, reasonable access to:
 - The workplace and facilities;
 - paid time during normal working hours, for the purposes of related training (note: this does not apply to small businesses).

An employer will be taken to have afforded the above rights if they have complied with the relevant Modern Award or enterprise agreement term on delegates' rights, or otherwise having regard to the enterprise's size and nature, available resources and facilities.

Statutory Rights

Under the new laws, the FW Act prohibits an employer from:

- unreasonably failing or refusing to deal with a delegate;
- knowingly or recklessly making a false representation to a delegate;
- unreasonably hindering, obstructing or preventing the exercise of a delegate's rights under the FW Act, a Modern Award or an enterprise agreement.

Award Rights

From 1 July 2024, Modern Awards will be required to include a term that provides for delegates' rights.

Enterprise Agreement Rights

Any enterprise agreement voted up after 1 July 2024 will also be required to include a term that provides for delegates' rights.

If (for EAs voted up after 1 July 2024) an EA's delegates rights term is less favourable than the relevant Modern Award term, then the Award term is taken to apply.